

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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**D.T.E. 06-4**

**MOTION FOR CONFIDENTIAL TREATMENT**

Verizon Massachusetts (“Verizon MA”) hereby requests that the Department provide confidential treatment for the relay services contract between Verizon MA and Sprint, filed herewith in response to the Department’s Information Request No. 1-4. As grounds for this motion, Verizon MA states that the terms of that contract qualify as trade secrets and/or confidential, competitively sensitive, proprietary information under Massachusetts law and are therefore entitled to protection from public disclosure.

**Argument**

Section 5 of Massachusetts General Laws Chapter 25 provides that “[t]he Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.”

In determining whether certain information qualifies as a “trade secret,”<sup>1</sup> Massachusetts courts have considered the following:

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<sup>1</sup> Under Massachusetts law, a trade secret is “anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement.” Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court (“SJC”), quoting from the Restatement of Torts, § 757, has further stated that “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and its competitors;
- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972). The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has “the right to keep the work which it had done, or paid for doing, to itself.” Similarly, courts in other jurisdictions have found that “[a] trade secret which is used in one’s business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one’s competitors were compelled.” Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

The relay services agreement between Verizon MA and Sprint, which has been provided to the Department only, contains confidential rates, terms and conditions on which Sprint provides relay services to Verizon MA. This contract is the result of a competitive bidding

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other device, or a list of customers.” J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970).

process, and its terms thus represent information of competitive value to Sprint, in that they give Sprint “an opportunity to obtain an advantage over competitors who do not know or use” that information. Disclosure of the terms of the contract to such competitors would arguably diminish the value of that information to Sprint. Verizon MA and, to its knowledge, Sprint have maintained the confidentiality of the terms of the relay services contract and have not allowed disclosure of those terms to competitors or the general public.

Further, there is no compelling need for public disclosure of this information. Verizon MA has produced a copy of the contract to the Department for use in this proceeding and is willing to produce the contract to other parties upon execution of an appropriate Protective Agreement. Accordingly, Verizon MA’s and its vendor’s interests in preserving the confidentiality of the data outweighs any interest in public disclosure.

WHEREFORE, Verizon MA respectfully requests that the Department grant this motion.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorney,

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